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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 138 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

TRIMURTI FABRICS

Appearance:

MR MIHIR H.JOSHI FOR MR MANISH R BHATT for Applicant.

MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal, has referred the following question at the instance of the revenue :

"Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal has been right in law in holding that the majoori payments of Rs.1,55,998/- paid by the assessee to it partners could not be disallowed under the provisions of section 40(b) of the Income-tax Act,1961 ?"

2 We have heard Mr.M.H.Joshi for the revenue and Mr.R.K.Patel for the respondent-assessee.

3 It is common ground between the parties that the question referred to us for the opinion stands concluded by a decision of this Court in the case of CIT vs. Yoganand Textiles, 202 ITR 869, wherein it is laid down that majoori payments made by the partnership firm to its partners are hit by Section 40(b) of the Income Tax Act,1961. But at the same time in dealing with the alternative contention raised on behalf of the assessee this Court has held that it would be necessary for the Tribunal to find out as to what was the real nature of the payment covered by section 40(b) of the Act, that was made by the firm to it's partner. In other words, all the expenditure incurred by the partners for carrying out activities which they were carrying out on behalf of the firm shall have to be deducted before disallowing the net remuneration paid to the partners in the hands of the firm u/s. 40(b) of the Act.

4 Following the aforesaid decision, we answer the question referred to us in the negative i.e. in favour of the revenue and against the assessee. However, the Tribunal shall go into the question of ascertaining what portion of the amount of Rs.1,55,998/- is real payment which could be termed as remuneration in the hands of the partners after taking into account all genuine deductible expenditure incurred for the work of the firm from these amounts as having been incurred by the firm itself to its partners.

5 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta, J)

m.m.bhatt